

**JOHNSON &
BORENSTEIN, LLC**
ATTORNEYS AT LAW

12 Chestnut Street
Andover, MA 01810-3706
Tel: 978-475-4488
Fax: 978-475-6703
www.jbllclaw.com
don@jbllclaw.com

Mark B. Johnson (MA, NH, DC)
Donald F. Borenstein (MA, ME, NH)

Keri M. Armstrong (MA, NH)
John M. Donnelly, Jr. (MA, NH)
Gordon T. Glass (ME, MA)
Philip J. Czarnec (MA)
Jonathan R. Stark-Sachs (MA, NH)
Briana R. McCarthy (MA)

Of Counsel
Robert W. Lavoie (MA, NH)

Paralegals
Karen L. Bussell
Lianne Patenaude
Ellen M. Melvin
Kristin L. Sayer

December 19, 2025

Via U.S. Cert Mail
& Email: EOHLCHousingAppealsCommittee@mass.gov

Executive Office of Housing and Liveable Communities
Housing Appeals Committee
100 Cambridge St., Suite 300
Boston, Massachusetts 02114

Re: Appeal of Approval with Conditions
Appellant: The Homes at Murphy's Farm, LLC
Board: Town of Dracut Zoning Board of Appeals

Dear Clerk Barros,

Please find enclosed Appellant The Homes at Murphy's Farm, LLC's Initial Pleading Cover Sheet, Initial Pleading, and Exhibits uploaded to the Sharepoint you provided. A check for thirteen thousand two hundred and ninety dollars (\$13,290) has also been sent to you today by overnight mail.

Please file these documents in your usual manner. Thank you for your assistance.

Very truly yours,

JOHNSON & BORENSTEIN, LLC

/s/ Donald F. Borenstein
Donald F. Borenstein
DFB~klb

JOHNSON &
BORENSTEIN, LLC
ATTORNEYS AT LAW

12 Chestnut Street
Andover, MA 01810-3706
Tel: 978-475-4488
Fax: 978-475-6703
www.jbllclaw.com
don@jbllclaw.com

Mark B. Johnson (MA, NH, DC)
Donald F. Borenstein (MA, ME, NH)

Keri M. Armstrong (MA, NH)
John M. Donnelly, Jr. (MA, NH)
Gordon T. Glass (ME, MA)
Philip J. Czarnec (MA)
Jonathan R. Stark-Sachs (MA, NH)
Briana R. McCarthy (MA)

Of Counsel
Robert W. Lavoie (MA, NH)

Paralegals
Karen L. Bussell
Lianne Patenaude
Ellen M. Melvin
Kristin L. Sayer

December 19, 2025

Via U.S. Cert Mail
& Email: EOHLCHousingAppealsCommittee@mass.gov

Executive Office of Housing and Liveable Communities
Housing Appeals Committee
100 Cambridge St., Suite 300
Boston, Massachusetts 02114

Re: Filing Fee - Appeal of Approval with Conditions
Appellant: The Homes at Murphy's Farm, LLC
Board: Town of Dracut Zoning Board of Appeals

Dear Clerk Barros,

Please find enclosed Appellant The Homes and Murphy's Farm, LLC's filing fee check for its appeal, filed today, for thirteen thousand two hundred and ninety dollars (\$13,290).

Thank you for your assistance.

Very truly yours,

JOHNSON & BORENSTEIN, LLC

/s/ Donald F. Borenstein
Donald F. Borenstein
DFB~klb

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HOUSE AND LIVABLE COMMUNITIES
HOUSING APPEALS COMMITTEE

HAC #: _____

Appeal of

THE HOMES AT MURPHY’S FARMS LLC,

From a Decision of the

TOWN OF DRACUT ZONING BOARD OF
APPEALS,

Regarding a Comprehensive Permit, Pursuant to
G.L. c. 40B, § 20-23

APPELLANT’S INITIAL PLEADING

1. This is The Homes at Murphy’s Farm, LLC’s (the “Applicant”) appeal, pursuant to G.L. c. 40B, § 22 and 760 CMR 56.00, from a decision of the Dracut Zoning Board of Appeals (the “Board”) granting a comprehensive permit to the Applicant with conditions that render uneconomic its proposed 268-unit affordable housing development (the “Project”) located at 231 Wheeler Street, Dracut (the “Locus”).
2. On July 5, 2023, the Applicant received a project eligibility letter from MassHousing for the Project, originally proposed at 300 units. A true and accurate copy of MassHousing’s project eligibility letter is attached as **Exhibit A**.
3. On July 31, 2023, the Applicant filed an application with the Board under G.L. c. 40B, §§ 20-23 for the development of 300 units, which were a mixture of four-bedroom flats and 4-bedroom townhouses, with a total of 47 residential buildings, along with two community clubhouses and various common recreation spaces. A true and accurate copy of the application filed with the Board, without its attachments, is attached as **Exhibit B**.

4. The public hearing was opened on August 24, 2023, but was repeatedly continued over the course of over two years until November 6, 2025, when the Board closed the public hearing. The Board held thirteen (13) public hearing sessions.
5. While the public hearing was open, the Applicant revised its Project proposal and plans several times at the request of the Board and its consultants and in response to comments from members of the public and their consultants, ultimately revising the Project to include 268 units. A true and accurate copy of the final revised Project plan set dated October 30, 2025, is attached as **Exhibit C**.
6. On October 1, 2024, MassHousing issued a letter stating that the reduction in units and related changes was not a substantial change affecting the earlier issued project eligibility letter. A true and accurate copy of MassHousing's letter finding no substantial change is attached as **Exhibit D**.
7. The Applicant also held multiple public workshops, including on July 18, 2024; August 8, 2024; March 12, 2025; June 16, 2025; July 9, 2025; August 6, 2025; and October 10, 2025.
8. By a written decision dated December 4, 2025, and filed with the Town of Dracut town clerk on December 8, 2025, the Board conditionally approved the comprehensive permit for Applicant's Project (the "Decision"). A true and accurate copy of the Decision is attached as **Exhibit E**.
9. The Appellant claims certain of those conditions are unlawful, not consistent with local needs, make the Project uneconomic, and subject the Project to local requirements or regulations that are not applied as equally as possible to subsidize and unsubsidized housing. Those conditions include but are not limited to:

- a. The Applicant objects to Condition 1 as being beyond the Board's authority, arbitrary and unsupported by evidence or input from the Applicant, and making the Project uneconomic by reducing the number of units by approximately 25%.

1. This Permit authorizes the construction, use and occupancy of up to 28 buildings as shown on the Approved Project Plan listed and defined in Condition 2 below. The Project shall not exceed 200 residential units in total. A minimum of 10% of the units shall be one-bedroom. A minimum of 10% of the units shall be three-bedrooms. The remainder of the units shall have two bedrooms each.

- b. The Applicant objects to Condition 63 as being beyond the Board's authority by requiring sewer connections fees above the normal calculations, practices, and recommendations of the Dracut Sewer Department, which considered the Project as a commercial property, and violating the requirement that regulations be equally applied to subsidized and non-subsidized housing under G.L. c. 40B, § 20 and 760 CMR 56.07(2)(a)(4).

63. Sewer Connection Fees Calculation – Each dwelling unit in a multiple dwelling, whether connected to the Town Sewer mains directly or indirectly, and whether in one or more buildings, shall be assessed as one unit. Each Market Rate unit shall pay a fee of \$7,500 and sewer connection fees shall be waived for the 25% of the units that qualify as Affordable Units. The estimated total for 200 units is \$1,125,000. The connection fee for each building must be paid in full prior to connection to the Town system.

- c. The Applicant objects to Condition 64 as being beyond the Board's authority by requiring water connections fees above the normal calculations, practices, and recommendations of the Kenwood Water Department and violating the requirement that regulations be equally applied to subsidized and non-subsidized housing under G.L. c. 40B, § 20 and 760 CMR 56.07(2)(a)(4).

64. Water Connection Fees Calculation - Water Connection fee shall be \$5,500 for the first unit and \$4,125 per additional unit. The

estimated total for 200 units is \$826,375. The connection fee for each building must be paid in full prior to connection to the Town system.

- d. The Applicant objects to Condition 72 as being beyond the Board's authority by requiring installation of a stockade fence, not mandated by any town bylaw, regulation, or other requirement, and violating the requirement that regulations be equally applied to subsidized and non-subsidized housing under G.L. c. 40B, § 20 and 760 CMR 56.07(2)(a)(4).

72. Landscaped Screening Buffer and Boundary Fence: Applicant shall install a landscaped screening buffer along a portion of the Project's boundary with neighboring homes located on Rinzee Road and Poppy Lane as shown on the plan entitled "Vegetative Screening, Murphy's Farm, Dracut, Massachusetts" dated October 10, 2024. In addition, the Applicant shall also install a 6' tall stockade fence of vinyl or composite construction along this same portion of the Project's boundary to discourage and present a barrier to passage between the Project Site and the rear yards of these neighboring homes.

- e. The Applicant objects to Condition 19 as being beyond the Board's authority by requiring the surfacing of stormwater detention basins with peastone and sand, not mandated by any town bylaw, regulation, or other requirement, and violating the requirement that regulations be equally applied to subsidized and non-subsidized housing under G.L. c. 40B, § 20 and 760 CMR 56.07(2)(a)(4).

19. The bottom of all infiltration basins shall consist of 6" of peastone over 6" of sand over the parent soil layer. As part of the operation and maintenance plan, if the infiltration basin does not infiltrate as designed due to clogging corrective action shall be taken such as replacing the peastone and/or sand layers. Inlet protection within Poppy Lane via catch basin filter bags or similar are often problematic due to lack of maintenance and are unlikely to receive approval from the DPW for their use there. Additionally silt-laden stormwater runoff or the discharge of other pollutants from the site entering Town roadways is prohibited, as it is a violation of the Town's Illicit Discharge By-Law (Chapter 25).

10. The Board did not receive any evidence or testimony about the economic effect of limiting the number of units to 200 and reducing the size of the Project by approximately 25%.
11. The Board did not request nor allow the Applicant to present its Pro Forma or other evidence of economic impact in response to the condition significantly reducing the number of units in the Project as set forth in 760 CMR 56.05(6).
12. The effect of Condition 1 is that the Board has approved a project other than that proposed by the Applicant, rather than rendering a decision on the Project as presented to the Board.
13. The Board's limitation of the Project to 200 units is therefore unlawful, arbitrary and capricious, and unsupported by evidence or a legitimate concern for specific local needs.
14. On October 15, 2025, the Board received a written memorandum with a recommendation of reasonable sewer connection fees from the Town of Dracut Sewer Department (the "Sewer Department") for the Project. A true and accurate copy of the Sewer Department's memo is attached as *Exhibit F*.
15. According to the Sewer Department's practices and interpretation of the Town of Dracut General Bylaw, Article XII, it designated the Project as commercial and calculated the fees based on that rate, totaling \$667,500.
16. The Board's estimated \$1,125,000 sewer connection fee is almost double what was recommended to the Board despite also requiring a 25% reduction in units.
17. The Decision does not indicate that the Board took into account the Sewer Department's recommendation, as required by 760 CMR 56.05(8), nor did it

- articulate on what basis or based on what local need it departed from that recommendation.
18. The Board's unequal application and calculation of the sewer connection fee to exact greater fees from subsidized housing is therefore unlawful in violation of G.L. c. 40B, § 20 and 760 CMR 56.07(2)(a)(4).
 19. On October 15, 2025, the Board received a written memorandum with a recommendation of reasonable water connection fees from the Kenwood Water District (the "Water District") for the Project. A true and accurate copy of the Water District's memorandum attached as *Exhibit G*.
 20. According to its application of the Water District fee schedule, the Water District estimated a water connection fee of \$893,564 for the Project.
 21. The Board's estimated \$826,375 water connection fee, while less than the Water District's recommendation, is based on an approximately 25% reduction in units and would be approximately \$1,106,875—an increase in excess of 10%—if applied to the full 268-unit Project as proposed.
 22. The Decision does not indicate that the Board took into account the Water District's recommendation, as required by 760 CMR 56.05(8), nor did it articulate on what basis or based on what local need it departed from that recommendation.
 23. The Board's unequal application and calculation of the water connection fee to exact greater fees from subsidized housing is therefore unlawful in violation of G.L. c. 40B, § 20 and 760 CMR 56.07(2)(a)(4).
 24. In sum, the conditions imposed by the Decision.

- (i) Are beyond the power of the Board to impose, intrude impermissibly into areas of programmatic concern of governmental agencies, or are in violation of the Comprehensive Permit Law;
 - (ii) In aggregate, make the building or operation of the project uneconomic and the conditions individually have more than a *de minimus* economic impact;
 - (iii) Do not apply the local requirements or regulations as equally as possible to subsidized and unsubsidized housing; and
 - (iv) Are not consistent with local need.
25. The Appellant requests that the Housing Appeals Committee, following its hearing, approve the Project as submitted by the Appellant, eliminate the unlawful conditions and the conditions that make the project uneconomic, and permit development of the Project as submitted by the Applicant.
26. Appellant's information: The Homes at Murphy's Farm, LLC, 18 Cassimere Street, Andover MA, 01810.
27. Appellant's Attorneys: Donald F. Borenstein, Johnson & Borenstein, LLC, 12 Chestnut Street, Andover, MA 01810, don@jblclaw.com.

Prayer for Relief

Appellant the Homes at Murphy's Farm LLC hereby requests the following relief:

- A. Strike out the following sentence from Condition 1: "*The Project shall not exceed 200 residential units in total.*"
- B. Strike the language of Condition 63 to the extent it is inconsistent with the recommendations of the Sewer Department, leaving the following language only: "*The connection fee for each building must be paid in full prior to connection to the Town system.*"

- C. Strike the language of Condition 64 to the extent it is inconsistent with the recommendations of the Water District, leaving the following language only: *“The connection fee for each building must be paid in full prior to connection to the Town system.”*
- D. Strike out the following phrase from Condition 72: *“In addition, the Applicant shall also install a 6' tall stockade fence of vinyl or composite construction along this same portion of the Project's boundary to discourage and present a barrier to passage between the Project Site and the rear yards of these neighboring homes.”*
- E. Strike out Condition 19 in its entirety, and allow the drainage infrastructure & maintenance to be constructed as proposed by the Applicant.

Respectfully Submitted,

The Homes at Murphy's Farm, LLC,

By its Attorneys,

/s/ Donald Borenstein

Donald F. Borenstein, BBO #566810

don@jblclaw.com

Johnson & Borenstein, LLC

12 Chestnut Street

Andover, MA 01810

Tel: (978) 475-4488

Fax: (978) 475-6703

Date: December 19, 2025

ATTACHED EXHIBITS

- **Exhibit A** - MassHousing's project eligibility letter dated July 5, 2023
- **Exhibit B** - Comprehensive Permit application filed with the Board on July 31, 2023, without its attachments
- **Exhibit C** - final Project plan set, revised through dated October 30, 2025
- **Exhibit D** - MassHousing's no substantial change letter dated October 1, 2024
- **Exhibit E** - Comprehensive Permit decision dated December 4, 2025, filed with the Town of Dracut town clerk on December 8, 2025
- **Exhibit F** - Sewer Department memorandum filed October 15, 2025
- **Exhibit G** - Water District memorandum filed October 15, 2025

INITIAL PLEADING COVER SHEET**HOUSING APPEALS COMMITTEE**

(PER 760 CMR 56.00)

Developer/Applicant (Name/Address): The Homes at Murphy's Farm, 18 Cassimere Street, Andover MA, 01810	Chairman/Zoning Board (Name/Address): Town of Dracut Zoning Board of Appeals Dracut Town Hall, 62 Arlington Street, Dracut MA, 01826
Developer/Applicant's Attorney (Name/Address/Phone/Fax/Email): Donald Borenstein, Esq. Johnson & Borenstein LLC 12 Chestnut Street, Andover MA, 01810 (978) 475-4488 don@jblclaw.com	Zoning Board's Attorney (Name/Address/Phone/Fax/Email): Ethan Dively, Esq. Christopher Heep, Esq. Harrington Heep LLP 40 Grove Street, Suite 190 Wellesley, MA 02482 edively@harringtonheep.com (617) 489-1600

Project Name: The Homes at Murphys FarmAddress: 231 Wheeler Street, Dracut MA, 01826Type of Development: Rental ☒ Ownership ☐ Mixed ☐Funding Agency/Program: MassHousingSite Approval/Project Eligibility: Yes ☒ No ☐ Date: July 5, 2023Total No. Units Appealed to H.A.C.: 268 No. Affordable (subsidized) Units: 67ZBA Decision: Denial ☐ Grant ☐ Grant With Conditions ☒ Constructive Grant ☐
Constructive Denial ☐ Other ☐Date ZBA Decision Filed With Municipal Clerk: December 8, 2025

Comments: _____

/s/ Donald Borenstein 12/15/2025

Developer's Attorney's Signature and Date

FOR DOCKET CLERK USE ONLY

Standard Fee Amount: \$ _____

Full Standard Fee enclosed
with Initial Pleading? ☐ Yes ☐ NoMotion on Fee enclosed
with Initial Pleading? ☐ Yes ☐ NoMinimum Fee of \$1,500 enclosed
with Initial Pleading? ☐ Yes ☐ No

Docket #: _____

Case #: _____

Motion on Fee: ☐ Granted ☐ Denied

on (date) _____

Additional Fee beyond \$1,500 Minimum
Fee paid as per Ruling on Motion on Fee:

amount: \$ _____

on (date): _____

HAC Appeal Date: _____